

House File 633 - Introduced

HOUSE FILE 633

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 336)

A BILL FOR

1 An Act providing an exemption from the computation of net
2 income for the individual income tax of net capital gain
3 from the sale or exchange of qualified capital stock and
4 including effective date and retroactive applicability
5 provisions.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 422.7, subsection 21, paragraph a,
2 subparagraph (2), Code 2013, is amended to read as follows:

3 (2) For purposes of this ~~paragraph~~ subsection, "*lineal*
4 *descendant*" means children of the taxpayer, including legally
5 adopted children and biological children, stepchildren,
6 grandchildren, great-grandchildren, and any other lineal
7 descendants of the taxpayer.

8 Sec. 2. Section 422.7, subsection 21, Code 2013, is amended
9 by adding the following new paragraph:

10 NEW PARAGRAPH. *f.* (1) Net capital gain from the sale or
11 exchange of capital stock of a qualified corporation for which
12 an election is made by an employee-owner.

13 (2) (a) An employee-owner is entitled to make one
14 irrevocable lifetime election to exclude the net capital
15 gain from the sale or exchange of capital stock of one
16 qualified corporation which capital stock was acquired by the
17 employee-owner on account of employment by such qualified
18 corporation and while employed by such qualified corporation.

19 (b) The election shall apply to all subsequent sales or
20 exchanges of the elected capital stock, provided it is capital
21 stock in the same qualified corporation and was acquired on
22 account of employment by such qualified corporation and while
23 employed by such qualified corporation.

24 (c) The election shall apply to transfers of the capital
25 stock by inter vivos gift from the employee-owner to the
26 employee-owner's spouse or lineal descendants, or to a trust
27 for the benefit of the employee-owner's spouse or lineal
28 descendants. This subparagraph division (c) shall apply to a
29 spouse only if the spouse was married to the employee-owner on
30 the date of the sale or exchange or the date of death of the
31 employee-owner.

32 (d) If the employee-owner dies without making an election,
33 the surviving spouse or, if there is no surviving spouse, the
34 personal representative of the employee-owner's estate may
35 make the election that would have qualified under subparagraph

1 division (c).

2 (e) The election shall be made by including a written
3 statement with the taxpayer's state income tax return for
4 the taxable year in which the election is made. The written
5 statement shall identify the qualified corporation that issued
6 the capital stock, the grounds for the election under this
7 paragraph "f", a statement that the taxpayer elects to have this
8 paragraph "f" apply, and any other information required by the
9 department. The department shall provide appropriate forms
10 for making elections and reporting exclusions pursuant to this
11 paragraph "f".

12 (3) For purposes of this paragraph:

13 (a) "*Capital stock*" means common or preferred stock, either
14 voting or nonvoting. "*Capital stock*" does not include stock
15 rights, stock warrants, stock options, or debt securities.

16 (b) "*Employee-owner*" means an individual who owns capital
17 stock in a qualified corporation, which capital stock was
18 acquired by the individual on account of employment by such
19 qualified corporation and while employed by such corporation.

20 (c) "*Personal representative*" means the same as defined in
21 section 633.3, or if there is no such personal representative
22 appointed, then the person legally authorized to perform
23 substantially the same functions.

24 (d) (i) "*Qualified corporation*" means a corporation
25 which, at the time of the first sale or exchange for which an
26 election is made under this paragraph "f", meets the following
27 conditions:

28 (A) The corporation has been in existence and actively doing
29 business in this state for at least ten years.

30 (B) The corporation has at least five shareholders.

31 (C) The corporation has at least two shareholders or
32 groups of shareholders who are not related. Two persons are
33 considered related when, under section 318 of the Internal
34 Revenue Code, one is a person who owns, directly or indirectly,
35 capital stock that if directly owned would be attributed to the

1 other person, or is the brother, sister, aunt, uncle, cousin,
2 niece, or nephew of the other person who owns capital stock
3 either directly or indirectly.

4 (ii) A qualified corporation shall include any member
5 of an affiliated group, as defined in section 422.32, if the
6 affiliated group includes a member that has been in existence
7 and actively doing business in this state for at least ten
8 years.

9 (iii) A qualified corporation shall include any corporation
10 that was a party to a reorganization that was entirely or
11 substantially tax free if such reorganization occurred during
12 or after the employment of the employee-owner.

13 Sec. 3. EFFECTIVE UPON ENACTMENT. This Act, being deemed of
14 immediate importance, takes effect upon enactment.

15 Sec. 4. RETROACTIVE APPLICABILITY. This Act applies
16 retroactively to January 1, 2013, for tax years beginning on
17 or after that date.

18 EXPLANATION

19 This bill grants an employee-owner, as defined in the
20 bill, one irrevocable lifetime election to exclude from state
21 individual income tax the net capital gain from the sale of
22 the capital stock of one qualified corporation. Several
23 requirements must be met for capital stock to qualify as
24 capital stock of a qualified corporation. First, the stock
25 must be either voting or nonvoting, common or preferred
26 stock. Stock rights, stock warrants, stock options, and debt
27 securities do not qualify. Second, the corporation that issued
28 the stock must be in existence and actively doing business
29 in Iowa for at least 10 years. A corporation that is part
30 of an affiliated group will qualify if the affiliated group
31 includes a member that has been in existence and actively doing
32 business in Iowa for at least 10 years. Third, the corporation
33 that issued the stock must have at least five shareholders,
34 two of whom must not be related. Fourth, the stock must have
35 been acquired by the employee-owner on account of employment

1 with the corporation and while employed by the corporation. A
2 corporation will qualify if it is a party to a reorganization
3 that was entirely or substantially tax free as long as the
4 reorganization occurred during or after the employee-owner's
5 employment.

6 The election shall apply to all subsequent sales of the
7 elected capital stock, provided it is capital stock in the same
8 qualified corporation and was acquired on account of employment
9 by the corporation and while employed by the corporation.

10 The bill provides that the election applies to transfers of
11 the capital stock by inter vivos gift from the employee-owner
12 to a spouse or lineal descendant, or to a trust for the benefit
13 of the employee-owner's spouse or lineal descendant. The
14 election will apply to a spouse only if the spouse was married
15 to the employee-owner on the date of the sale or the date of the
16 employee-owner's death.

17 If, after making a valid inter vivos transfer of stock that
18 meets all the requirements for an election, an employee-owner
19 dies without making an election, the surviving spouse, or if
20 there is no surviving spouse, the personal representative of
21 the employee-owner's estate may make the election.

22 An election is made by including a written statement
23 containing certain required information, as specified in the
24 bill, with the taxpayer's Iowa income tax return for the
25 taxable year in which the election is made. The department of
26 revenue is required to provide appropriate forms for making
27 elections and reporting exclusions.

28 The bill takes effect upon enactment and applies
29 retroactively to January 1, 2013, for tax years beginning on
30 or after that date.